CLEGHORN AND WASHBURN MINING CO.

IBLA 80-283 Decided December 15, 1980

Appeal from decision of the Colorado State Office, Bureau of Land Management, holding mining claims abandoned and void. CO 946.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

   Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that the Post Office may have assured the claimant that the documents would reach the Colorado State Office by Oct. 22, 1979, will not excuse the late filing.

APPEARANCES: Byron Nagata for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The Cleghorn and Washburn Mining Company appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated

November 27, 1979, declaring appellant's mining claims 1/ abandoned and void. BLM stated that appellant's filings were being returned because the filings for the claims were not received on or before October 22, 1979, the date for filing claims located before October 21, 1976, as required by the Federal Land Policy and Management Act of 1976 (October 21) (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(a). The decision indicated that failure to file within the time limits must be deemed conclusively to constitute an abandonment of the mining claims and they are declared void.

On appeal, appellant notes that its filings were received only one day late, October 23, 1979, instead of October 22, 1979. Appellant asserts that when the filings were mailed on October 20, 1979, and that assurance was obtained from a Postal Service employee that the documents would reach BLM by October 22, 1979.

[1] Section 314(b) FLPMA, 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 also provides that failure to timely file such records shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The pertinent regulation, 43 CFR 3833.1-2(a), reads as follows:

[§] 3833.1-2 Manner of recordation -- Federal lands.

> (a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or

1/ The claims involved in this appeal are as follows: Rex Nos. 1-29, 30-37, 38-43 (inclusive); Rex Fraction; Amex; Annex No. 1; Pete Nos. 1, 2; Solitude; Rio Seco; Equinox; Pablo Nos. 1-5 (inclusive); Adak Nos. 1-3 (inclusive); Renegade Nos. 1-8 (inclusive); JRG: JRG No. 1; Black Eagle; Black Eagle Nos. 2-5 (inclusive); Virgin; Cave Nos. 1 and 2 mining claims.

> certificate of location [of the claim or site, a certificate of location 2/] containing the information in paragraph (c) of this section shall be filed.

The above quoted regulation notes that "file" shall mean being received and date stamped by the proper BLM office. Therefore, the documents had to be received and date stamped by the Colorado State Office by October 22, 1979, in order to be filed timely. Norman E. Brooks, 48 IBLA 16 (1980); Ray F. Coffee, 47 IBLA 217 (1980); John Sloan, 47 IBLA 146 (1980); C. F. Linn, 45 IBLA 156 (1980). The documents were not date stamped by the State office until October 23, 1979. Failure to comply must result in a conclusive finding that the claims have been abandoned and are void. 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that the Post Office may have assured appellant that the documents would reach the BLM office by October 22, 1979, will not excuse the late filing. We have repeatedly held that one who selects a means of delivering a document must bear the responsibility for any consequential delay or failure of delivery by that means. Henry D. Friedman, 49 IBLA 97 (1980), and cases cited therein; H. P. Saunders, 3/ 59 I.D. 41 (1945).

2/ The bracketed language was inadvertently omitted from 43 CFR 3833.1-2(a) (1979) upon printing. The correctly promulgated regulation appeared at 44 FR 20430 (Apr. 5, 1979).

3/ In Saunders at 42-43, the Department stated: "'Filing, it must be observed, is not complete until the document is delivered and received. "Shall file" means to deliver to the office and not send through the United States mails. * * * A paper is filed when it is delivered to the proper official and by him received and filed.' United States v. Lombardo, 241 U.S. 73, 76 (1916); Poynor v. Commissioner of Internal Revenue, 81 F. (2d) 521, 522 (C. C. A. 5th, 1936); Weaver v. United States, 72 F. (2d) 20, 21 (C. C. A. 4th, 1934); Tyson v. United States, 76 F. (2d) 533, 534 (C. C. A. 4th, 1935); Wampler v. Snyder, 66 F. (2d) 195, 196 (App. D.C., 1933); Stebbins' Estate v. Helvering, 74 App. D.C. 21, 121 F. (2d) 892, 894 (1941); Creasy v. United States, 4 F. Supp. 175, 177-178 (D. C. W. D. Va., 1933). Even if, as claimed by Saunders, the letter, in the usual course of the mails, should have reached the register at Las Cruces prior to the expiration of the lease, the fact nevertheless remains that the applications were not filed on time, for a paper is considered filed only at the time when it is actually delivered to the received by the office concerned, not when it could have reached that office in the regular course of the mails. Poynor v. Commissioner of Internal Revenue, supra; Weaver v. United States, supra. 1/ It is thus immaterial whether or not there was any unusual delay in the delivery of the letter and whether or not the post office was 'negligent.'" (Footnote omitted.)

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

I concur:

Bernard V. Parrette
Chief Administrative Judge

ADMINISTRATIVE JUDGE GOSS DISSENTING:

If the facts are as claimed, appellant was dissuaded by a United States Postal Service employee from sending the filing by overnight express, and encouraged to send it first class instead. The documents were posted before noon on October 20, 1979, in Grand Junction, Colorado, but not received at BLM, Denver, until October 23. It is possible the filing was delayed merely because appellant took the precaution of sending it by certified mail.

I submit we should focus our attention on the purpose of the statute. Congress must be presumed to have used the word "abandoned" advisedly. It was not intended for miners to lose their claims as the result of incorrect action by Government employees. In Harris v. United States, 215 F.2d 69 (4th Cir. 1954) at 76, the court held:

> As said by Mr. Justice Field in United States v. Kirby, 7 Wall 482, 486, 19 L.Ed. 278, in a passage quoted with approval by Chief Justice Hughes in Sorrells v. United States, 287 U.S. 435, 447, * * *:
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> > "All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter."
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> See also Holy Trinity Church v. United States, 143 U.S. 457, 459-462 * * *; Lau Ow Bew v. United States, 144 U.S. 47 * * *; Territory of Hawaii v. Mankichi, 190 U.S. 197, 212-214 * * * United States v. Jin Fuey Moy, 241 U.S. 394, 402 * * * United States v. Katz, 271 U.S. 354, 362 * * * United States v. Chemical Foundation, 272 U.S. 1, 18 * * *.

Also in connection with relief based upon the actions of a Government employee, see United States v. Wharton, 514 F.2d 406, 413 (9th Cir. 1975), and Brandt v. Hickel, 427 F.2d 53, 57 (9th Cir. 1970).

I would remand to the State Office for a ruling on the facts. If appellant was dissuaded from using a faster mail service, appellant should be held to have substantially complied with the statute.

Joseph W. Goss
Administrative Judge